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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JAMES GLEN MORAN, Defendant and Appellant.	H046163 (Santa Clara County Super. Ct. Nos. C1882149, C1884663, C1886269)

Defendant James Glen Moran appeals from a four-year split sentence imposed as part of a negotiated disposition resolving three cases. His sole appellate argument is that the trial court failed to orally dismiss one count at the sentencing hearing. Though the trial court did not orally dismiss the count, no sentence was imposed for it and the sentencing minute order indicates the count was dismissed. The Attorney General concedes that the parties intended to dismiss the count. Though the parties suggest we reverse and remand the matter to allow the trial court to orally dismiss the count, we will affirm the judgment because it is clear that the sentencing minute order and abstract of judgment reflect the intention of the trial court and the parties.

I. TRIAL COURT PROCEEDINGS

This case involves three felony complaints filed over the course of three months in early 2018. (The underlying facts are irrelevant to the sole appellate issue.) In case No. 1882149 (auto theft case) defendant was charged with one count of driving or taking a vehicle without permission as a felony (Veh. Code, § 10851, subd. (a)) with a prior

conviction for the same offense (Pen. Code, § 666.5). The complaint alleged defendant had served six prior prison terms. (Pen. Code, § 667.5, subd. (b).) In case No. C1884663 (vandalism case) defendant was charged with one count of vandalism involving more than $400 (Pen. Code, § 594), and the complaint alleged defendant had served four prior prison terms (Pen. Code, § 667.5, subd. (b)). In case No. C1886269 (burglary case) defendant was charged with one count of second degree burglary (Pen. Code, §§ 459, 460) and one count of grand theft (Pen. Code, §§ 484, 487). The complaint alleged defendant had served six prior prison terms. (Pen. Code, § 667.5, subd. (b).)

Defendant agreed to resolve the auto theft case by negotiated disposition. In return for pleading no contest to driving or taking a vehicle without permission and admitting the prior prison term allegations, defendant would receive a four-year split sentence consisting of two years in county jail followed by two years released on mandatory supervision. (Pen. Code, § 1170, subd. (h)(5)(A).) About two months later the parties agreed to resolve the vandalism and burglary cases by negotiated disposition at a single hearing; defendant would receive a four-year split sentence in each case, and the sentences would run concurrent to the sentence in the auto theft case. In the vandalism case defendant pleaded no contest to vandalism and admitted four prior prison terms. And in the burglary case he pleaded no contest to second degree burglary and admitted six prior prison terms. Regarding the grand theft count in the burglary case, the court asked, "is there a motion by the People to dismiss [the grand theft count] at the time of sentencing?" The prosecutor answered, "Yes," and defense counsel did not object. The probation report states that "Ct. Two, Section 484/487(a) of the Penal Code, a Felony, is submitted for dismissal."

The trial court held a single sentencing hearing for all three cases. The court imposed a four-year split sentence in the auto theft case, calculated as the four-year upper term for the Vehicle Code section 10851 conviction with a prior conviction for the same offense (Pen. Code, § 666.5, subd. (a)). The court struck punishment for the prior prison

term enhancements (Pen. Code, § 1385) in the auto theft case. In the vandalism case, the court imposed a four-year split sentence to run concurrent to the auto theft case, consisting of the three-year upper term for vandalism (Pen. Code, § 594) and one year for one prior prison term enhancement (Pen. Code, § 667.5, subd. (b)). The court struck punishment for the remaining prior prison term enhancements (Pen. Code, § 1385). In the burglary case the court imposed a four-year split sentence to run concurrent to the auto theft case, consisting of the three-year upper term for second degree burglary (Pen. Code, §§ 459, 460) and one year for one prior prison term enhancement (Pen. Code, § 667.5, subd. (b)). The court struck punishment for the remaining prior prison term enhancements (Pen. Code, § 1385). The court did not address the pending motion to dismiss the grand theft count, the prosecution did not renew its motion, nor did defense counsel bring it to the court's attention.

The sentencing minute order states that "ct 2" (i.e., the grand theft count in the burglary case) was dismissed at sentencing. And the abstract of judgment makes no reference to the grand theft count.

II. DISCUSSION

The parties urge us to reverse the judgment and remand this matter to give the trial court an opportunity to orally dismiss the grand theft count. As a general rule, "[w]hen there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls." (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.) That is because rendition of judgment is an oral pronouncement. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) Because entering the judgment in the minutes is a clerical function, a discrepancy between the judgment as orally pronounced by the court and as entered in the clerk's minutes is presumed to be the result of clerical error. (*Ibid.*) But the Supreme Court directs us to harmonize written and oral pronouncements if possible. (*People v. Smith* (1983) 33 Cal.3d 596, 599; see *People v. Cleveland* (2004) 32 Cal.4th 704, 768 [finding that an erroneous statement in the reporter's transcript

purporting to impose a one-year sentence enhancement was "of no effect" because the minute order and abstract of judgment correctly omitted the enhancement].)

Here, it is clear the parties and the trial court intended to dismiss the grand theft count at sentencing. At the change of plea hearing, the court asked the prosecutor whether there was a "motion by the People to dismiss [the grand theft count] at the time of sentencing," and the prosecutor answered in the affirmative. The probation report indicated the grand theft count would be submitted for dismissal at sentencing. And at sentencing the trial court did not suspend or impose sentence on the grand theft count. It appears that the court simply forgot to orally dismiss the grand theft count, and the parties did not call the omission to the court's attention. But the sentencing minute order correctly reflects the parties' and trial court's intention to dismiss that count, and the abstract of judgment makes no reference to it. As such, there is no conflict in the record regarding the grand theft count that would require resolution by modification or remand. We perceive no potential collateral consequence to defendant from the trial court's failure to *orally* dismiss the count. And judicial economy would not be served by remanding the matter for a new hearing on this issue. We therefore decline to remand the matter for another hearing, as there is no error in the sentencing minute order nor in the abstract of judgment.

III. DISPOSITION

The judgment is affirmed.

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Grover, J.

WE CONCUR:

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Mihara, Acting P. J.

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Danner, J.